



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 11, 2021

OFFICE OF  
RESEARCH AND DEVELOPMENT

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: H. Christopher Frey  
Deputy Assistant Administrator for Science Policy

A handwritten signature in black ink, appearing to read "HCF", is placed to the right of the "FROM:" line.

TO: Jennifer Orme-Zavaleta  
Acting Assistant Administrator for Research and Development

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal financial conflict of interest law, 18 U.S.C. § 208(a), I may not participate personally and substantially in any particular matter having a direct and predictable effect on my financial interests, or the financial interests of a person or entity whose financial interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption as outlined in 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse and minor child; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have a financial interest in **North Carolina State University (NC State)** and the **Hong Kong University of Science & Technology (HKUST)** from which I have taken a two-year, unpaid leave of absence. Therefore, I may not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of either entity unless I first obtain a written waiver or my participation is permitted by a regulatory exemption, including the exemption for employees on leave from institutions of higher learning allowing participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b). This latter exemption allows me to participate in a particular matter of general applicability, such as a rulemaking, so long as it does not have a distinct effect on either of the institution other than as part of class.

### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (the Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I have additional ethics obligations with respect to the **Health Effects Institute**, which is a former client of my consulting firm, the Energy, Air, and Risk Associates, LLC<sup>1</sup>, as well as **Emisia SA (Greece)**, and the **Hong Kong Environmental Protection Department**, for which I provided personal services. The Executive Order provides more restrictions than the federal ethics rules and require that I recuse myself from participating in EPA matters in which any of these entities is a party or represents a party for two years from my EPA appointment date, or **until January 31, 2023**, unless I receive a waiver of these provisions by the EPA Designated Agency Ethics Official after consultation with the White House.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, then I could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>2</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards at 5 C.F.R. § 2635.502(a), I have a “covered relationship” with **NC State** and the **HKUST** during the period of my leaves of absence and for one year thereafter. Therefore, I may not participate in a particular matter involving specific parties in which any of these entities is a party or represents a party during the time period of my recusal, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d).

### *DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of **Elizabeth Blackburn, Chief of Staff**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

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<sup>1</sup> During my tenure at EPA, I will not accept consulting work for my sole proprietorship or through Energy, Air, and Risk Associates, LLC of which I am the sole member.

<sup>2</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

cc: Justina Fugh, Director, Ethics Office  
Elizabeth Blackburn, Chief of Staff  
Chris Robbins  
Bruce Rodan  
Carolyn Hubbard  
Louis D'Amico  
Pradnya Bhandari  
Emily Trentacoste  
Rachel Matney  
Mark McPherson  
Anna Hassan  
Nathan Gentry

**From:** [Mosley, Ferne](#)  
**To:** [Frey, Christopher](#)  
**Cc:** [Fugh, Justina](#)  
**Subject:** RE: Chris Frey and NC State  
**Date:** Thursday, July 22, 2021 11:49:53 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Hello, Chris – for the record and for clarification, I’ve made a substantive edit to the advice below that the NCSU interview will NOT cause a reasonable person to question your impartiality.

My apologies!

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Mosley, Ferne  
**Sent:** Friday, February 19, 2021 4:32 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** FW: Chris Frey and NC State

Hello, Chris – just to confirm, we reviewed the request from the NC State student newspaper to feature you in an interview in your official capacity. Pursuant to the ethics regulations regarding impartiality, you are not permitted to participate in an EPA matter in which your former employer is a party for one year from the date that you left their employment, if a reasonable person will question your impartiality. *See generally*, 5 Code of Federal Regulations Section 2635.502(a). This regulation exists to make sure that the public does not think that you are providing your former employer with special access to you or that you are providing them with preferential treatment over other similarly-situated entities, such as other colleges/universities in which you have no relationship.

Typically, this rule is applied to Agency actions involving a matter under an employee’s discretion such as granting meetings, taking certain actions relating to contracts, grants, or other matters having a financial or other significant impact on an outside entity. In this case, the action you are taking in an official capacity is agreeing to appear for an interview to discuss your new position and the role of ORD/EPA. This is a topic of general interest which does not have a direct and predictable

effect on NC State's financial interests, and is not a discussion that you've exclusively offered to NC State, as we've been informed that there is a similar pending request with another university that the Agency has agreed to have you participate in an official capacity. For these reasons, we have determined that you participating in an interview with NC State is a decision which will **[Mosley, Ferne]** not cause a reasonable person to question your impartiality, and therefore, does not violate the impartiality regulations.

However, this restriction still applies to your official participation in other matters involving NC State during your one-year cooling off period unless your participation is authorized in advance by our office, so please be sure to disqualify yourself from participating in these matters absent prior approval. In addition, if you have a continuing financial interest with NC State, you may not participate in official matters affecting its financial interests. Finally, you may never show any non-federal entity preferential treatment or use your public office for the private gain of another person or entity with which you are affiliated in a non-governmental capacity.

Once we have a complete picture of your financial interests and other reportable affiliations, we will provide you with a formal recusal statement that you may sign and share with your immediate staff.

Please let me know if you have any questions.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*

U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Mosley, Ferne

**Sent:** Friday, February 19, 2021 3:49 PM

**To:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>; Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** RE: Chris Frey and NC State

Carolyn and others – we do not have an ethics issue with him participating in the interview in his official capacity. We will write to him directly regarding our determination regarding his ethics obligations. But, yes, continue to check with us if anything comes in from NC State, as he does have a recusal requirement for one year from the date he departed unless we otherwise permit his participation.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*

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Ethics Office/Office of General Counsel  
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Washington, DC 20460  
(202) 564-8046 (desk)  
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[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>

**Sent:** Friday, February 19, 2021 3:46 PM

**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>; Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** RE: Chris Frey and NC State

Thank you

Carolyn Hubbard  
Communications Director  
EPA Office of Research and Development  
202-379-6744

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Sent:** Friday, February 19, 2021 3:38 PM

**To:** Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>; Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** RE: Chris Frey and NC State

OK, thanks, so they are asking for an interview in his official capacity. We will consult further and get back to you soon.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*

U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
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Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>  
**Sent:** Friday, February 19, 2021 2:51 PM  
**To:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>; Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

The email came to his EPA address. Attaching a copy of the original request here.

Rachel Matney (she/her/hers)  
Office of Research and Development  
U.S. Environmental Protection Agency  
Mail Code: 8101R | 1200 Pennsylvania Ave, NW | Washington, DC 20460

Office: 202-564-2953 | Mobile: 202-702-4456 | Email: [Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)

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**From:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>  
**Sent:** Friday, February 19, 2021 2:44 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>; Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

I don't know if it was sent to his personal email or EPA email. Copying Rachel to see if she can find out. I have notified OPA as a heads up that he's planning to do the interview, and the press secretary (Nick Conger) didn't express any concerns. I think he could do it in his personal capacity, but since the questions are related to his new role at EPA, it seems to me that would make it in his official capacity as an EPA official.

If he gets similar requests they would also be granted. As a matter of fact he's also been invited to participate in a podcast put out by Carnegie Mellon.

Does this help?

Carolyn Hubbard  
Communications Director  
EPA Office of Research and Development  
202-379-6744

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, February 19, 2021 2:25 PM  
**To:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Thanks, Carolyn – but I can't see if this was sent to him at his EPA email address or at his personal email (I don't need to see his personal email if that's the case, but I just need to know.) I'm assuming that he (or your office) is contemplating conducting this interview in his official capacity and work with the Office of Public Affairs on his remarks?

He does have a one-year cooling off period for participating in EPA matters in which his former employer is a party, but that applies to official activities. Even in that case, it has to involve a matter in which a "reasonable person" will question his impartiality if he participates. Even if that hurdle is met, if the government (e.g., the Chief of Staff) determines that the Agency's interest in having him conduct this interview outweighs appearance concerns of a lack of impartiality due to his prior employment relationship, his participation can be authorized. He may not show any preferential treatment to his former employer at any time, meaning, he would have to agree to give interviews to other interested organizations or academic institutions should he be asked to do so in the future.

Bottom line: is there an important Agency interest in having him give this interview in his official capacity because this is a target audience that we want to share ORD's/EPA's mission even though he has a former affiliation with NC State? What is the standard as we would apply to a similar request with an academic institution who asked for an interview? Clearly, NC State has an interest in speaking to him since he's worked there.

Happy to discuss further.  
Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:54 PM  
**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>; Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey and NC State



This is the email request:

On Feb 15, 2021, at 7:58 PM, (b) (6) wrote:

Hello, Dr. Frey! I hope this email finds you well.

My name is (b) (6), and I am one of the assistant news editors for *Technician* here at State. I'd like to interview you for a profile on your new position as the deputy assistant administrator for the EPA's Office of Research and Development under the Biden administration. I would be asking you a few questions about your new title as deputy assistant administrator, what the Office of Research and Development's role is over the course of the pandemic, and how your career as an NC State professor will be impacted.

If you have some time this week for an interview, please shoot me a few days and times that work well for you and I will set up a Zoom call.

Hope to hear from you soon,

--

(b) (6) (she/her/hers)  
Asst. News Editor // [Technician](#)

(b) (6)

Carolyn Hubbard  
Communications Director  
EPA Office of Research and Development  
202-379-6744

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**From:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:49 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Hi Ferne,

Thanks for your help navigating this. I'm adding Carolyn Hubbard who has the details about the interview. Carolyn, can you please provide Ferne with the invitation for the interview for the NC State school newspaper.

Liz

Liz Blackburn (she/her/hers)  
Chief of Staff  
EPA Office of Research and Development  
202-564-2192  
Mobile: 202-436-2453



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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:46 PM  
**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Hello, Liz – can you please send me the invitation from NC State? Thanks.

Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:26 PM  
**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Cc:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Liz,  
Please coordinate with Ferne Mosley, copied here, about Chris's recusal issues. He does have issues, but Ferne can help you navigate them. She's the ethics POC for Chris Frey.  
Justina

4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

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**From:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Sent:** Friday, February 19, 2021 11:04 AM

**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** Chris Frey and NC State

Hi Justina,

I recall that Tom Burke wasn't allowed to have any interaction with Johns Hopkins while he was here. What interactions is Chris Frey allowed to have with NC State? I assume limited to none. The school run newspaper wants to interview him and I'm confirming that doesn't violate any rules.

Thanks

Liz

Liz Blackburn (she/her/hers)

Chief of Staff

EPA Office of Research and Development

202-564-2192

Mobile: 202-436-2453



**From:** [Frey, Christopher](#)  
**To:** [Mosley, Ferne](#)  
**Subject:** RE: Integrity.gov: Report Returned  
**Date:** Tuesday, April 20, 2021 8:57:49 AM

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Good Morning Ferne:

Just an update: I am still working on the amounts needed for the SF278. I expect to be able to resubmit within a day or two.

Regarding today's meeting at 1:30 pm, ORD has an all-hands meeting that starts at 2:00 pm. I am introducing a guest speaker at the start of the all-hands meeting and need to sign on to that around 1:50 pm. Will 20 minutes be enough for our topic today?

Chris

-----Original Message-----

From: Frey, Christopher  
Sent: Sunday, April 18, 2021 4:18 PM  
To: Integrity.gov Notification <notifications@integrity.gov>  
Cc: Mosley, Ferne <mosley.ferne@epa.gov>  
Subject: RE: Integrity.gov: Report Returned

Hi Ferne:

Thanks for letting me know... I am working on completing the amounts needed. Thanks for the clarification on the retirement account assets.

I will upload as soon as I finish entering the needed data.

Best regards,

Chris

-----Original Message-----

From: Integrity.gov <notifications@integrity.gov>  
Sent: Friday, April 16, 2021 3:34 PM  
To: Frey, Christopher <Frey.Christopher@epa.gov>  
Cc: Mosley, Ferne <mosley.ferne@epa.gov>  
Subject: Integrity.gov: Report Returned

Hi, Chris - (b) (6)

but please complete the information of the others. Thanks.

**From:** [Frey, Christopher](#)  
**To:** [Mosley, Ferne](#)  
**Subject:** RE: Outside position  
**Date:** Thursday, May 06, 2021 2:47:16 PM  
**Attachments:** [image001.png](#)

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Thank you Ferne! This is extremely helpful.

Chris

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Thursday, May 6, 2021 2:37 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** RE: Outside position

Right, omit your EPA position and only use your NC State position as that is the capacity in which you are publishing.

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Mosley, Ferne  
**Sent:** Thursday, May 6, 2021 2:37 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** RE: Outside position

No, you only need a disclaimer if you are using your EPA title.

Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
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Washington, DC 20460  
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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Thursday, May 6, 2021 2:36 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Outside position

Ferne:

Thank you. A question of clarification: Is there any specific disclaimer language that I should use in these publications, or – if I understand your statement correctly - should I identify only with NCSU and omit my EPA affiliation, and thus be silent regarding EPA?

Thank you on the progress on the recusal statement.

Best regards,

Chris

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H. Christopher Frey, Ph.D. (he/him/his)

Deputy Assistant Administrator for Science Policy  
Office of Research and Development, Mail Code: 8101R  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Mobile: (b) (6) | Email: [frey.christopher@epa.gov](mailto:frey.christopher@epa.gov)

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Thursday, May 6, 2021 2:23 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** RE: Outside position

Hi, Chris - Justina confirmed that you are able to continue to work with the students and publish using your NC State credentials, not your EPA title.

I'll have your draft recusal statement ready for your review later this afternoon.

Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Mosley, Ferne  
**Sent:** Wednesday, May 5, 2021 5:59 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** RE: Outside position

OK, thanks...I will confirm and get back to you shortly.

Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Wednesday, May 5, 2021 5:18 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Outside position

Good Afternoon Ferne:

(b) (6)

Thus, it is not a live issue anymore.

I would appreciate confirmation of my earlier conversation with Justina about being able to work on scientific/scholarly journal manuscripts on my own time, and any particular disclaimer that I should use in that regard. E.g., There are some journal papers that were in progress with my students at NCSU before I took this position, and they take some time to finalize and go through the publication pipeline.

Thank you,

Chris

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Wednesday, May 5, 2021 4:46 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** RE: Outside position

Hi, Chris – sorry I’m just getting back to you; I’ve scheduled a meeting with Justina tomorrow to discuss (b) (6), (b) (5)

(b) (5)

I should know something by the end of the week or early next week.

Thanks for getting your report back to us. I’ll go over the edits and let you know if I have anything else. We are also working on your disqualification statement so stand by for that as well.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Friday, April 30, 2021 1:59 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Outside position

Good Afternoon Ferne:

(b) (6). Would there be implications if I did?

Also, I’d like to confirm something I had discussed with Justina prior to coming on-board. My understanding is that, as long as I do this on my own time (and I would not be doing this for any pay), I can still work with students/colleagues to complete journal manuscripts for publication. My understanding is that there would be a standard disclaimer that I should use, to make clear that the papers are not related to my working at, and my work at, EPA. I would appreciate any details or clarifications on this point.

Thank you,

Chris

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Wednesday, April 28, 2021 11:12 AM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** Outside position

Hi, Chris – one thing I need to clarify, (b) (6)



*Ferne L. Mosley, Attorney-Advisor*

U.S. Environmental Protection Agency

Ethics Office/Office of General Counsel

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1200 Pennsylvania Ave, NW

Washington, DC 20460

(202) 564-8046 (desk)

(202) 306-2998 (mobile)

[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)



**From:** [Mosley, Ferne](#)  
**To:** [Frey, Christopher](#)  
**Subject:** (b) (6)  
**Date:** Tuesday, March 16, 2021 12:13:00 PM

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OK, thanks, I'll let Justina know. (b) (6), (b) (5)

[REDACTED]

(b) (6), (b) (5)

[REDACTED]

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
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1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Frey, Christopher <Frey.Christopher@epa.gov>  
**Sent:** Tuesday, March 16, 2021 11:55 AM  
**To:** Mosley, Ferne <mosley.ferne@epa.gov>  
**Subject:** (b) (6)

Hi Ferne:

Thank you for letting me know. (b) (6)

[REDACTED]

(b) (6)

Best regards,

Chris

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H. Christopher Frey, Ph.D. (he/him/his)  
Deputy Assistant Administrator for Science Policy  
Office of Research and Development, Mail Code: 8101R  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Mobile: (b) (6) | Email: [frey.christopher@epa.gov](mailto:frey.christopher@epa.gov)

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Tuesday, March 16, 2021 10:42 AM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** (b) (6)

Hi, Chris – (b) (6)  
(b) (6), so I hope we will be able to get you an answer soon.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

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**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Thursday, March 4, 2021 3:46 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** (b) (6)

Thank you Ferne.

Chris

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Thursday, March 4, 2021 2:19 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** (b) (6)

Hi, Chris – Justina has a meeting with the Chief of Staff on Tuesday, so hopefully, we will get this resolved soon thereafter.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Wednesday, March 3, 2021 2:31 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** (b) (6)

Thank you Ferne. I completely understand.

Chris

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Wednesday, March 3, 2021 2:17 PM  
**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Subject:** (b) (6)

Hi, Chris – (b) (6), (b) (5); I did check with her yesterday and she said she is going to make another inquiry.

I apologize I don't have an answer yet, but we are trying to get it resolved as soon as possible and I will be sure to give you an update.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*

U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel  
William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>

**Sent:** Wednesday, March 3, 2021 1:54 PM

**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Subject:** (b) (6)

Good afternoon Ferne:

Just curious if there is any update on the issue raised below.

Thank you, and best regards,

Chris

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Sent:** Wednesday, February 24, 2021 11:25 AM

**To:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>

**Subject:** (b) (6)

Hello, Chris – let me look this over and speak with Justina (b) (6), (b) (5)

I'll get back to you shortly.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*

U.S. Environmental Protection Agency  
Ethics Office/Office of General Counsel

William Jefferson Clinton Building North, Room 4113A  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Frey, Christopher <[Frey.Christopher@epa.gov](mailto:Frey.Christopher@epa.gov)>  
**Sent:** Wednesday, February 24, 2021 10:48 AM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** (b) (6)

Dear Ferne:

(b) (6)

[Redacted]

(b) (6)

[Redacted]

If you need more information, please let me know. Also would be happy to discuss.

Thank you,

Chris

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H. Christopher Frey, Ph.D. (he/him/his)  
Deputy Assistant Administrator for Science Policy  
Office of Research and Development, Mail Code: 8101R  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Mobile: (b) (6) | Email: [frey.christopher@epa.gov](mailto:frey.christopher@epa.gov)

On Fri, Feb 19, 2021 at 1:23 PM (b) (6) > wrote:

Hello Chris,

(b) (6)  
[Redacted text block]

[Redacted text block]

(b) (6)  
[Redacted text block]

[Redacted text block]

(b) (6)  
[Redacted text block]

[Redacted text block]

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(b) (6)  
[Redacted text block]

[Redacted text block]

**From:** [Frey, Christopher](#)  
**To:** [ethics](#)  
**Subject:** Biden ethics pledge- signed  
**Date:** Thursday, February 04, 2021 1:48:24 PM  
**Attachments:** [Biden Ethics Pledge for digital signature signed.pdf](#)

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Please find attached my signed Biden ethics pledge.

Best regards,

Chris Frey

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H. Christopher Frey, Ph.D. (he/him/his)  
Deputy Assistant Administrator for Science Policy  
Office of Research and Development, Mail Code: 8101R  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave NW  
Washington, DC 20460

Mobile: (b) (6) | Email: [frey.christopher@epa.gov](mailto:frey.christopher@epa.gov)

## ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
  - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
  - (b) participate in the specific issue area in which that particular matter falls; or
  - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Frey, H

Signature



Digitally signed by Frey, H  
Date: 2021.02.04 12:39:47 -05'00'

February 2, 2021

Date

Name (Type or Print):

H. Christopher Frey



**From:** [Fugh, Justina](#)  
**To:** [Diaz, Catherine](#); [Efron, Brent](#); [Engelman-Lado, Marianne](#); [freyc.christopher@epa.gov](mailto:freyc.christopher@epa.gov); [Goldberg, Ruby](#); [Kim, Eun](#); [Levy, Maxwell](#); [Nunez, Alejandra](#); [O'Brien, Grant](#); [Sabater, Juan](#); [Waterhouse, Carlton](#); [Michalos, Maria](#); [Conger, Nicholas](#)  
**Subject:** Welcome to the wonderful world of public financial disclosure reporting!  
**Date:** Tuesday, February 02, 2021 7:58:00 PM  
**Attachments:** [Advisory - 278 and 278T reporting obligations January 2021 digitally signed.pdf](#)  
[reporting periods for 278s.docx](#)  
[When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx](#)

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Hi there,

Welcome to EPA! My name is Justina Fugh, and I'm the director of the EPA Ethics Office. For your initial ethics training on Thursday, February 4 at noon, we'll go over your ethics obligations, which includes submitting the public financial disclosure report. Yes, in your position, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. Using your EPA email address (or for Catie and Eunjung, your personal email addresses), I have now assigned you a new entrant report that my staff will review. Having this information will allow us to assess your conflicts issues and then to draft recusal statements for those of you who need them. Don't worry ... we're here to help you.

#### DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from your start date at EPA or 3/2/21. If you need additional time, you must contact [ethics@epa.gov](mailto:ethics@epa.gov) before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

#### THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system ([www.INTEGRITY.gov](http://www.INTEGRITY.gov)) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns. We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. We have entered your filer category as Schedule C (even if that might change later) and your filer status as "full time." For help in INTEGRITY, check out the OGE [Public Financial Disclosure Guide](#). The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact [ethics@epa.gov](mailto:ethics@epa.gov).

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely.

#### REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

#### REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other

forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

#### YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

#### HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button
- The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at [ethics@epa.gov](mailto:ethics@epa.gov). Good luck with the form and remember, we can answer any questions you may have.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

January 22, 2021

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh  
Date: 2021.01.22 12:07:49  
-05'00'  
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at [www.oge.gov](http://www.oge.gov).

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)<sup>1</sup> and Periodic Transaction Reports (OGE 278-Ts).<sup>2</sup> **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.<sup>3</sup> **Unpaid late fees are subject to the Agency's<sup>4</sup> and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

<sup>1</sup> See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

<sup>2</sup> Pub. L. 112-105 § 11 (STOCK Act).

<sup>3</sup> See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

<sup>4</sup> See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

OGE 278e - New Entrant reports	<b>Within 30 days</b> of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	<b>No later than May 15</b>
OGE 278e – Termination reports	<b>No later than 30 days after</b> leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports <sup>5</sup>	<b>The <i>earlier of</i> 30 days</b> after learning of a transaction or <b>45 days</b> of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to [ethics@epa.gov](mailto:ethics@epa.gov) **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to [ethics@epa.gov](mailto:ethics@epa.gov) describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.<sup>6</sup>

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact [ethics@epa.gov](mailto:ethics@epa.gov).

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

<sup>5</sup> See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

<sup>6</sup> In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.



# When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

**A \$200 late filing fee penalty is assessed for each late periodic reporting period<sup>1</sup>**

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Investment assets held by you, your spouse, or jointly held		
• Stocks or stock options	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• Commodity futures	Yes	Yes
• Other investment securities	Yes	Yes
• Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Stocks	Yes	Yes
• Corporate or municipal bonds (exclude U.S. Treasury securities)	Yes	Yes
• commodity futures	Yes	Yes
• other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> or UGMA brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes <sup>2</sup>
• Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds" <sup>3</sup>	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals) or certificates of deposit	No	No
• Money market accounts and mutual funds	No	No
• US Treasury securities (e.g., T bills, Treasury bonds, savings bonds)	No	No
• Federal government retirement accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust <sup>4</sup>	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

Last updated November 2020

<sup>1</sup> This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

<sup>2</sup> Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

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<sup>3</sup> To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact [ethics@epa.gov](mailto:ethics@epa.gov).

<sup>4</sup> OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email [ethics@epa.gov](mailto:ethics@epa.gov).

The reporting periods for the OGE Form 278e vary depending on the type of report being filed.

Part	Report Information for the Following Period...			
	Nominee, New Entrant, and Candidate	Annual	Termination	Annual / Termination
1. Filer's Positions Held Outside United States Government	Preceding Two Calendar Years to Filing Date	Preceding Calendar Year to Filing Date	Current Calendar Year to Term Date (in addition, the preceding calendar year if an Annual report for that year is required but has not yet been filed)	Preceding Calendar Year to Term Date
2. Filer's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date <sup>1</sup>	Preceding Calendar Year	Same as Part 1	Same as Part 1
3. Filer's Employment Agreements and Arrangements	As of Filing Date	Preceding Calendar Year to Filing Date	Same as Part 1	Same as Part 1
4. Filer's Sources of Compensation Exceeding \$5,000 in a Year	Preceding Two Calendar Years to Filing Date (n/a for Candidates)	N/A – Leave this Part blank	N/A – Leave this Part blank	N/A – Leave this Part blank
5. Spouse's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date <sup>1</sup>	Preceding Calendar Year	Same as Part 1	Same as Part 1
6. Other Assets and Income	Preceding Calendar Year to Filing Date <sup>1</sup>	Preceding Calendar Year	Same as Part 1	Same as Part 1
7. Transactions	N/A – Leave this Part blank	Preceding Calendar Year <sup>2</sup>	Same as Part 1 <sup>2</sup>	Same as Part 1 <sup>2</sup>
8. Liabilities	Preceding Calendar Year to Filing Date <sup>1</sup>	Preceding Calendar Year	Same as Part 1	Same as Part 1
9. Gifts and Travel Reimbursements	N/A – Leave this Part blank	Preceding Calendar Year <sup>3</sup>	Same as Part 1 <sup>3</sup>	Same as Part 1 <sup>3</sup>

1. For example, if today is March 3, 2019, the reporting period would run from January 1, 2018, to March 3, 2019. When valuing assets and liabilities, the filer may choose any date that is fewer than 31 days before the filing date.

2. Filers do not need to include any period when they were not a public financial disclosure filer or an employee of the United States Government.

3. Filers do not need to include any period when they were not an employee of the United States Government.

#### Extensions Do Not Change the Reporting Period

The reporting period is tied to a report's original due date and is unaffected by any extensions. For example, a New Entrant report was originally due December 14, 2019. The filer received a 30-day extension and filed January 8, 2020. The Part 2 reporting period would start on January 1, 2018, and end on December 14, 2019.



## Ethics Briefing

### 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

<b>Jim Payne</b> Designated Agency Ethics Official (202) 564-0212 <a href="mailto:payne.james@epa.gov">payne.james@epa.gov</a>	
<b>Justina Fugh</b> Alternate Agency Ethics Official and Director of Ethics Office (202) 564-1786 <a href="mailto:fugh.justina@epa.gov">fugh.justina@epa.gov</a>	
<b>Shannon Griffo</b> Ethics Attorney (202) 564-7061 <a href="mailto:griffo.shannon@epa.gov">griffo.shannon@epa.gov</a>	<b>Margaret Ross</b> Ethics Officer (202) 564-3221 <a href="mailto:ross.margaret@epa.gov">ross.margaret@epa.gov</a>
<b>Jennie Keith</b> Ethics Officer (202) 564-3412 <a href="mailto:keith.jennie@epa.gov">keith.jennie@epa.gov</a>	<b>Victoria Clarke</b> Ethics Attorney 202-564-1149 <a href="mailto:clarke.victoria@epa.gov">clarke.victoria@epa.gov</a>
<b>Ferne Mosley</b> Ethics Attorney (202) 564-8046 <a href="mailto:mosley.ferne@epa.gov">mosley.ferne@epa.gov</a>	<b>OGC/Ethics</b> All Staff and Helpline (202) 564-2200 <a href="mailto:ethics@epa.gov">ethics@epa.gov</a>

You can also visit the [OGC/Ethics SharePoint site](#) for more information.

### 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your [basic obligation of public service](#) that we'll address in this briefing material.

### 3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.
- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.
- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.
  - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).
- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.
- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.
- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.
- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.
- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

#### **4. Financial Disclosure Reporting**

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over \$1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

#### **5. Attorney Client Privilege & FOIA**

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

#### **6. Conflicts of Interest**

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

## **7. Appearance of a Loss of Impartiality**

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

## **8. No representation back to the federal government**

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statutes, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

## **9. Acceptance of Gifts**

Be careful of any gift from people outside the Agency, particularly those that are worth more than \$20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding \$10 from EPA employees, nor give gifts exceeding \$10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

## **10. Attendance at Widely-Attended Gatherings (ethics check required)**

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclosure report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

### **IMPORTANT NOTE about Embedding Ethics into Your Calendaring Process**

Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## **11. Travel Issues**

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See <http://intranet.epa.gov/ogc/ethics/travel.htm> . Prior to the pandemic, OGC/Ethics accepted over \$1 million each year in discretionary travel paid by non-federal sources.

## **12. Preferential Treatment of Non-Federal Entities (Endorsement)**

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## **13. Political Activities**

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## **14. Lobbying Issues**

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## **15. Use of Government Personnel and Resources**

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s [Limited Personal Use of Government Equipment Policy](#). Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## **16. Outside Activities**

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency’s ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA’s Supplemental Ethics Regulations at [5 C.F.R. § 6401.103](#). Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA’s general subject matter area, industry, or economic sector primarily affected by EPA’s programs and operations. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(3\)](#).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is \$29,595. See [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.304](#). This amount changes each year;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.305](#);
- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. [See 5 C.F.R. § 2636.306](#); and
- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). [See 5 C.F.R. § 2636.307](#).

## **17. Ethics Obligations of Supervisors**

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at [5 C.F.R. § 2638.103](#):

Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the [Standards of Conduct](#) and that subordinates know how to contact [agency ethics officials](#). Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at [ethics@epa.gov](mailto:ethics@epa.gov).

## **18. Seeking Employment**

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## **19. Negotiating for Employment**

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.



## **20. Post-Government Employment - Representational Restrictions**

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

### **Lifetime bar - on particular matters that you worked on**

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back" means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

### **2-year bar - on EPA matters pending during your last year in federal service**

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

### **Senior Employee "cooling off restriction" – on any matter**

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is [\\$172,395 per year](#) (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

January 22, 2021

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh  
Date: 2021.01.22 12:07:49  
-05'00'  
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at [www.oge.gov](http://www.oge.gov).

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)<sup>1</sup> and Periodic Transaction Reports (OGE 278-Ts).<sup>2</sup> **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.<sup>3</sup> **Unpaid late fees are subject to the Agency's<sup>4</sup> and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

<sup>1</sup> See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

<sup>2</sup> Pub. L. 112-105 § 11 (STOCK Act).

<sup>3</sup> See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

<sup>4</sup> See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

OGE 278e - New Entrant reports	<b>Within 30 days</b> of entering a covered position (either by appointment to a permanent or acting in covered position)
OGE 278e – Incumbent reports	<b>No later than May 15</b>
OGE 278e – Termination reports	<b>No later than 30 days after</b> leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination)
OGE 278T – Periodic transaction reports <sup>5</sup>	<b>The <i>earlier of</i> 30 days</b> after learning of a transaction or <b>45 days</b> of the transaction taking place.

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to [ethics@epa.gov](mailto:ethics@epa.gov) **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to [ethics@epa.gov](mailto:ethics@epa.gov) describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.<sup>6</sup>

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact [ethics@epa.gov](mailto:ethics@epa.gov).

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

<sup>5</sup> See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

<sup>6</sup> In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

	Periodic Transaction Report	Annual and/or Termination Report
Investment Assets	Report on the OGE 278-T?	Report on Part 7 of the OGE 278e?
Transactions of \$1,000 or less		
• Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset	No	No
Your investment assets (or jointly held)		
• Your stocks	Yes	Yes
• Your bonds (except U.S. Treasury securities)	Yes	Yes
• Your commodity futures	Yes	Yes
• Your other investment securities	Yes	Yes
• Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles	Yes	Yes
Your spouse's investment assets		
• Spouse's stocks	Yes	Yes
• Spouse's bonds (except U.S. Treasury securities)	Yes	Yes
• Spouse's commodity futures	Yes	Yes
• Spouse's other investment securities	Yes	Yes
• Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles	Yes	Yes
Your dependent child's investment assets		
• Dependent child's stocks	Yes	Yes
• Dependent child's bonds (except U.S. Treasury securities)	Yes	Yes
• Dependent child's commodity futures	Yes	Yes
• Dependent child's other investment securities	Yes	Yes
• Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles	Yes	Yes
Other investment assets irrespective of ownership		
• Real Property	No	Yes <sup>1</sup>
• Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" <sup>2</sup>	No	Yes
• Any asset in which the transaction amount is \$1,000 or less	No	No
• Cash accounts (deposits and/or withdrawals)	No	No
• Money market accounts	No	No
• Money market funds	No	No
• Certificates of deposits	No	No
• US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds)	No	No
• Federal Government Retirement Accounts (e.g., Thrift Savings Plan)	No	No
• Life insurance and annuities	No	No
• Collectibles	No	No
• Assets held within an excepted trust <sup>3</sup>	No	No
• Transfer of assets between you, your spouse, and your dependent children	No	No

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<sup>1</sup> Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

<sup>2</sup> To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact [ethics@epa.gov](mailto:ethics@epa.gov).

<sup>3</sup> OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email [ethics@epa.gov](mailto:ethics@epa.gov).



**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

Your full name

Your telephone number\*

Date negotiation or agreement began

Your Title / Office / AAship or Region

Your email address\*

Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation

*\* Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

- |    | Yes                      | No                       |   |
|----|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.   |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | My office in EPA does work that affects the non-federal entity with which I am seeking employment.          |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements?  
See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

Sign and submit to [ethics@epa.gov](mailto:ethics@epa.gov):

Your signature

OGC/Ethics Use Only:

**Statement 1: EPA’s programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is “yes” to any of the following questions, then you must answer “yes” to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check “yes” to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check “yes” to statement 3.

- Will the work you do affect the sector? Don’t concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues’ projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact [ethics@epa.gov](mailto:ethics@epa.gov) to discuss.**

## Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”**

Type of Activity	PAS*	Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other	Career SES, ALJs
<b>Personal (off premises and off duty)</b>			
Express support for or opposition to a political candidate when off duty	Yes	Yes	Yes
Run as a partisan candidate for nomination or office in a partisan election	No	No	No
Solicit and accept contributions for your campaign in a non-partisan election	Yes	Yes	Yes
Solicit a contribution from a member of your union	N/A	Yes	N/A
Work a phone bank asking individuals to volunteer	Yes	Yes	No
Campaign on behalf of a candidate in a partisan election	Yes	Yes	No
Be active on behalf of a candidate at political rallies or meetings	Yes	Yes	No
Attend political rallies and meetings	Yes	Yes	Yes
Contribute money to political organizations	Yes	Yes	Yes
Work in non-partisan voter registration drives	Yes	Yes	Yes
Work in partisan voter registration drives	Yes	Yes	No
Register and vote	Yes	Yes	Yes
Sign a nominating petition	Yes	Yes	Yes
Distribute campaign material in a partisan election	Yes	Yes	No
Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work	Yes	Yes	Yes but nonpartisan only
Drive people to polling station on behalf of a campaign	Yes	Yes	No
<b>Affecting Official Resources</b>			
Use office time for political activity	Yes; IG-No	No	No
Use official space for political activity in general	Yes; IG-No	No	No
<b>Fundraising</b>			
Attend a political fundraiser	Yes	Yes	Yes
Solicit, accept or receive political contributions in general	No	No	No
Solicit or receive a political contribution on government premises	No	No	No
Plan or organize a political fundraiser when off duty	Yes	Yes	No
Sponsor, host, or allow your name as sponsor/host for a political fundraiser	No	No	No
Serve drinks or check coats at a political fundraiser	Yes	Yes	No
Speak at a partisan fundraiser without appealing for money	Yes	Yes	No
Allow only your name to be listed as speaker on fundraising invitation	Yes	Yes	No

\*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service



# EPA Ethics Program

Counseling Practice Area:

Vetting Invitations

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ♦ Gifts ♦ Fundraising ♦ Political Activity ♦ Endorsements  
President's Ethics Pledge ♦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

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## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethic Commitments by Executive Branch Personnel

JANUARY 20, 2021 • [PRESIDENTIAL ACTIONS](#)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

“Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

“1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

“6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

“7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

“8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate’s qualifications, competence, and experience.

“9. Assent to Enforcement. I acknowledge that the Executive Order entitled ‘Ethics Commitments by Executive Branch Personnel,’ issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.”

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”:

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service

provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.



(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

- (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;
- (ii) the uniqueness of the individual's qualifications to meet the government's needs;
- (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and
- (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

- (i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;
- (ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;
- (iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and
- (iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.



(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,  
January 20, 2021.

**From:** [Mosley, Ferne](#)  
**To:** [Fugh, Justina](#)  
**Subject:** (b) (6)  
**Date:** Tuesday, March 16, 2021 12:23:47 PM

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Hi Justina – FYI, (b) (5), (b) (6)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
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(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

**From:** [Fugh, Justina](#)  
**To:** [Mosley, Ferne](#)  
**Subject:** RE: Chris Frey - teaching at NC State  
**Date:** Friday, April 16, 2021 4:04:00 PM  
**Attachments:** [working notes for incoming appointees 1-25-21 .docx](#)

Here are my notes from 1/25/21 about him, but I don't see that I wrote to him any specific email.

Frey, H. Christopher	NC State University	(b) (6)	(b) (6)	Yes for NC State	(b) (6), (b) (5)
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(b) (6), (b) (5)

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>  
**Sent:** Friday, April 16, 2021 3:51 PM  
**To:** Fugh, Justina <Fugh.Justina@epa.gov>  
**Subject:** RE: Chris Frey - teaching at NC State

OK, (b) (5)

I'll inquire further...

*Ferne L. Mosley, Attorney-Advisor*  
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Washington, DC 20460  
(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Friday, April 16, 2021 3:48 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey - teaching at NC State

No, (b) (5)

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, April 16, 2021 3:21 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** Chris Frey - teaching at NC State

Justina, (b) (6), (b) (5), (b) (3) (A)

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

**From:** [Mosley, Ferne](#)  
**To:** [Fugh, Justina](#)  
**Cc:** [Griffo, Shannon](#)  
**Subject:** RE: Chris Frey and NC State  
**Date:** Friday, February 19, 2021 3:32:55 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)

---

OK, but (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Ferne L. Mosley, Attorney-Advisor*

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Friday, February 19, 2021 3:29 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Let's get Shannon's input here ...

My inclination is (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, February 19, 2021 2:48 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Subject:** FW: Chris Frey and NC State

Hi, (b) (5)

[REDACTED]

[REDACTED]

(b) (5)

Do you agree? Has this come up before? I just want to be consistent.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>

**Sent:** Friday, February 19, 2021 2:44 PM

**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>; Matney, Rachel <[Matney.Rachel@epa.gov](mailto:Matney.Rachel@epa.gov)>

**Subject:** RE: Chris Frey and NC State

I don't know if it was sent to his personal email or EPA email. Copying Rachel to see if she can find out. I have notified OPA as a heads up that he's planning to do the interview, and the press secretary (Nick Conger) didn't express any concerns. I think he could do it in his personal capacity, but since the questions are related to his new role at EPA, it seems to me that would make it in his official capacity as an EPA official.

If he gets similar requests they would also be granted. As a matter of fact he's also been invited to participate in a podcast put out by Carnegie Mellon.

Does this help?

Carolyn Hubbard  
Communications Director  
EPA Office of Research and Development  
202-379-6744

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Sent:** Friday, February 19, 2021 2:25 PM

**To:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>; Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>



**Cc:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** RE: Chris Frey and NC State

Thanks, Carolyn – but I can't see if this was sent to him at his EPA email address or at his personal email (I don't need to see his personal email if that's the case, but I just need to know.) I'm assuming that he (or your office) is contemplating conducting this interview in his official capacity and work with the Office of Public Affairs on his remarks?

He does have a one-year cooling off period for participating in EPA matters in which his former employer is a party, but that applies to official activities. Even in that case, it has to involve a matter in which a "reasonable person" will question his impartiality if he participates. Even if that hurdle is met, if the government (e.g., the Chief of Staff) determines that the Agency's interest in having him conduct this interview outweighs appearance concerns of a lack of impartiality due to his prior employment relationship, his participation can be authorized. He may not show any preferential treatment to his former employer at any time, meaning, he would have to agree to give interviews to other interested organizations or academic institutions should he be asked to do so in the future.

Bottom line: is there an important Agency interest in having him give this interview in his official capacity because this is a target audience that we want to share ORD's/EPA's mission even though he has a former affiliation with NC State? What is the standard as we would apply to a similar request with an academic institution who asked for an interview? Clearly, NC State has an interest in speaking to him since he's worked there.

Happy to discuss further.

Ferne

*Ferne L. Mosley, Attorney-Advisor*

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Washington, DC 20460

(202) 564-8046 (desk)

(202) 306-2998 (mobile)

[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>

**Sent:** Friday, February 19, 2021 12:54 PM

**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>; Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Subject:** RE: Chris Frey and NC State

This is the email request:

On Feb 15, 2021, at 7:58 PM, (b) (6) > wrote:

Hello, Dr. Frey! I hope this email finds you well.

My name is (b) (6), and I am one of the assistant news editors for *Technician* here at State. I'd like to interview you for a profile on your new position as the deputy assistant administrator for the EPA's Office of Research and Development under the Biden administration. I would be asking you a few questions about your new title as deputy assistant administrator, what the Office of Research and Development's role is over the course of the pandemic, and how your career as an NC State professor will be impacted.

If you have some time this week for an interview, please shoot me a few days and times that work well for you and I will set up a Zoom call.

Hope to hear from you soon,

--

(b) (6) (she/her/hers)  
Asst. News Editor // [Technician](#)

(b) (6)

Carolyn Hubbard  
Communications Director  
EPA Office of Research and Development  
202-379-6744

---

**From:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:49 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Hubbard, Carolyn <[Hubbard.Carolyn@epa.gov](mailto:Hubbard.Carolyn@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Hi Ferne,

Thanks for your help navigating this. I'm adding Carolyn Hubbard who has the details about the interview. Carolyn, can you please provide Ferne with the invitation for the interview for the NC State school newspaper.

Liz

Liz Blackburn (she/her/hers)  
Chief of Staff  
EPA Office of Research and Development  
202-564-2192

Mobile: 202-436-2453



---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:46 PM  
**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Hello, Liz – can you please send me the invitation from NC State? Thanks.

Ferne

*Ferne L. Mosley, Attorney-Advisor*  
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(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Friday, February 19, 2021 12:26 PM  
**To:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>  
**Cc:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey and NC State

Liz,

Please coordinate with Ferne Mosley, copied here, about Chris's recusal issues. He does have issues, but Ferne can help you navigate them. She's the ethics POC for Chris Frey.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Blackburn, Elizabeth <[Blackburn.Elizabeth@epa.gov](mailto:Blackburn.Elizabeth@epa.gov)>

**Sent:** Friday, February 19, 2021 11:04 AM

**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Subject:** Chris Frey and NC State

Hi Justina,

I recall that Tom Burke wasn't allowed to have any interaction with Johns Hopkins while he was here. What interactions is Chris Frey allowed to have with NC State? I assume limited to none. The school run newspaper wants to interview him and I'm confirming that doesn't violate any rules.

Thanks

Liz

Liz Blackburn (she/her/hers)

Chief of Staff

EPA Office of Research and Development

202-564-2192

Mobile: 202-436-2453



**From:** [Mosley, Ferne](#)  
**To:** [Griffo, Shannon](#)  
**Subject:** RE: Chris Frey recusal  
**Date:** Friday, April 23, 2021 12:40:43 PM

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Ah, this is awesome! I didn't even remember it is addressed in the regulation – thanks so much! I'll check with Justina, too, and ask her to review the final draft. (b) (5)

[REDACTED]

[REDACTED]

Thanks!

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>  
**Sent:** Friday, April 23, 2021 12:32 PM  
**To:** Mosley, Ferne <mosley.ferne@epa.gov>  
**Subject:** RE: Chris Frey recusal

I'm not sure (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

That being said, I'm going to ask another question. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

This is the language from the EA guide: "I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of XX University, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for either the exemption for employees on leave from institutions of higher learning allowing

participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b), or another regulatory exemption, pursuant to 18 U.C.S. § 208(b)(2).”

Shannon Griffio  
Office of General Counsel, Ethics Office  
U.S. Environmental Protection Agency  
(202) 564-7061  
[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, April 23, 2021 12:06 PM  
**To:** Griffio, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey recusal

Thanks, I was just asking about (b) (5)

If it's easier, just give me a call...thanks for your comments.

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(202) 564-8046 (desk)  
(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Griffio, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Sent:** Friday, April 23, 2021 11:36 AM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey recusal

Ah. (b) (5)

(b) (5)

And yes, (b) (5)

Shannon Griffio  
Office of General Counsel, Ethics Office  
U.S. Environmental Protection Agency  
(202) 564-7061  
[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, April 23, 2021 11:09 AM  
**To:** Griffio, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey recusal

Thanks.. (b) (5)

Just thought of that....

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Griffio, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Sent:** Friday, April 23, 2021 10:39 AM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Subject:** RE: Chris Frey recusal

Attached are some of my comments for your consideration.

Thanks!  
Shannon

Shannon Griffo  
Office of General Counsel, Ethics Office  
U.S. Environmental Protection Agency  
(202) 564-7061  
[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Thursday, April 22, 2021 1:40 PM  
**To:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** Chris Frey recusal

Hi Shannon, I've drafted this for Chris Frey. Can you take a look at it and see if I'm misstating anything when you have a few minutes? I just need another pair of eyes. I made some of the edits that I'd suggested for the draft that Victoria was working on that we discussed at the staff meeting.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*  
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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)



**From:** [Mosley, Ferne](#)  
**To:** [Fugh, Justina](#)  
**Cc:** [Griffo, Shannon](#)  
**Subject:** RE: Chris Frey's recusals  
**Date:** Wednesday, April 28, 2021 10:31:29 AM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Frey\\_recusal\\_for\\_signature\\_draft - JF comments plus Ferne.docx](#)

Hi, I've attached a new version with some comments and provided the information he submitted on his 278 (b) (6)

(b) (6), (b) (3) (A)

(b) (6), (b) (3) (A)

*Ferne L. Mosley, Attorney-Advisor*

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---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 11:45 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey's recusals

Hi,

Thanks for the review opportunity! I am a slow and plodding thinker so I was confused by a few things: (b) (5)

Well,  
here are my comments for your consideration!  
justina

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 5:08 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>

**Subject:** RE: Chris Frey's recusals

OK, here's the draft for Chris, so let me know what you think.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*

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[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 3:46 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey's recusals

Got it! thanks!

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**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 3:44 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey's recusals

OK, but I think (b) (5)

[REDACTED]

I think (b) (5)

[REDACTED]

*Ferne L. Mosley, Attorney-Advisor*

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(202) 306-2998 (mobile)  
[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)

---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 3:30 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey's recusals

Hi,

HKU is incorporated under Hong Kong Ordinance (Chapter 1053 of 1964), which says that the University's powers and duties,

the privileges, and the constitution, and may be amended only by the Legislative Council of Hong Kong. (b) (5)

Justina

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>

**Sent:** Tuesday, April 27, 2021 3:10 PM

**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>

**Cc:** Griffo, Shannon <[Griffo.Shannon@epa.gov](mailto:Griffo.Shannon@epa.gov)>

**Subject:** RE: Chris Frey's recusals

Hi, since I sent that note, I looked up information on the Hong Kong University governance late last Friday. The University has a governing Ordinance and Statute and there is a governing body for the University. The ordinance/statutes includes provisions regarding how faculty decisions are made. (b) (5)

- |  |   |
|--|---|
| <p>7. (1) There shall be a Court, a Council and a Senate whose respective constitutions, powers, and duties shall be prescribed by this Ordinance and the statutes.</p> <p>(2) The Court shall, subject to the provisions of this Ordinance and the statutes, be the supreme advisory body of the University.</p> <p>(3) The Council shall be the supreme governing body of the University, and shall provide for the custody and use of the University seal, and subject to the provisions of this Ordinance and the statutes, the Council may exercise all the powers and is to perform all the duties of the University other than those vested or imposed by this Ordinance or the statutes in some other authority of the University or in an officer.</p> <p>(4) Subject to the provisions of this Ordinance and the statutes, and to the financial control of the Council, the Senate shall have the regulation of all matters relating to education in the University.</p> <p>(5) No act or resolution of the Court, the Council, or the Senate shall be invalid by reason only of any vacancy in, or any want of qualification by or invalidity in the election or appointment of any member of, any such body.</p> <p>* (9) The teachers are the Chairs, Professors, Associate Professors and Assistant Professors of the University, and such other persons as may be designated as teachers by the statutes. The teachers are to be appointed by the Council on such terms as it thinks fit. The Council shall not terminate the appointment of any teacher except where after due enquiry into the facts and after receiving the advice of the Senate on the findings of such enquiry there exists in the opinion of the Council good cause for such termination.</p> <p>(10) Notwithstanding the provisions of subsections (6) and (9), any officer or teacher —</p> <p>(a) who is appointed after or continued in employment beyond a retiring age determined by the Council; or</p> <p>(b) whose employment is temporary, part-time or for a fixed term, may be removed from office in accordance with the terms of his contract of service or on any other lawful grounds, without any reason for such removal being assigned.</p> <p>(11) An appeal shall lie to the Chancellor from any decision of the Council to terminate the appointment of any officer or teacher.</p> | <p>Court, Council and Senate, their constitutions, powers and duties.</p> |
|--|---|

*Ferne L. Mosley, Attorney-Advisor*

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---

**From:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Sent:** Tuesday, April 27, 2021 2:58 PM  
**To:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Cc:** Griffio, Shannon <[Griffio.Shannon@epa.gov](mailto:Griffio.Shannon@epa.gov)>  
**Subject:** RE: Chris Frey's recusals

Hi,

(b) (5)

[Redacted]

[Redacted]

Justina

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Friday, April 23, 2021 3:54 PM  
**To:** Fugh, Justina <[Fugh.Justina@epa.gov](mailto:Fugh.Justina@epa.gov)>  
**Cc:** Griffio, Shannon <[Griffio.Shannon@epa.gov](mailto:Griffio.Shannon@epa.gov)>  
**Subject:** Chris Frey's recusals

Hi, Justina – with Shannon’s assistance, I’ve drafted a recusal statement for Chris Frey. He is actually on a leave of absence from two universities, NC State and the Hong Kong University. So, (b) (5)

[Redacted]

[Redacted]

[Redacted]

Ferne

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## **Applicability of Emoluments Clause to Employment of Government Employees by Foreign Public Universities**

The Emoluments Clause of the Constitution does not apply in the cases of government employees offered faculty employment by a foreign public university where it can be shown that the university acts independently of the foreign state when making faculty employment decisions.

March 1, 1994

### **MEMORANDUM OPINION FOR THE CHIEF COUNSEL GODDARD SPACE FLIGHT CENTER NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

This memorandum responds to your request of September 9, 1993, for our opinion concerning the applicability of the Emoluments Clause, U.S. Const. art. I, § 9, cl. 8 ("Emoluments Clause"), to the employment by the University of Victoria in British Columbia, Canada, of two scientists on leave without pay from the Goddard Space Flight Center ("Goddard"), a component of the National Aeronautics and Space Administration ("NASA").<sup>1</sup> We conclude that the Emoluments Clause does not apply in these cases.

#### **I.**

As Goddard has explained, Drs. Inez Fung and James K. B. Bishop have sought your administrative approval for employment as Professors in the School of Earth and Ocean Sciences at the University of Victoria until August 31, 1994. During that period, the two scientists would be in Leave Without Pay status from their positions at the Goddard Institute for Space Studies, a component of Goddard. (Goddard is itself a NASA field installation.) Both scientists hold the position of Aerospace Technology (AST)/Global Ecology Studies at the GS-15 level. For their services in teaching and research while on leave, Drs. Fung and Bishop would be paid \$85,000 and \$70,000 respectively by the University of Victoria.

The University of Victoria operates under the University Act, a statute enacted by the legislature of British Columbia. See University Act, R.S.B.C., ch. 419 (1979) (Can.) ("University Act"). The Act provides that the university is to consist of a chancellor, convocation, board, senate, and faculties. University Act, § 3(2). The chancellor is to be elected by the members of the convocation, *id.* § 11(1), and is to serve on the board of governors, *id.* § 19(a). The convocation is composed of

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<sup>1</sup> See Letter for Walter Dellinger, Acting Assistant Attorney General, Office of Legal Counsel, from Lawrence F. Watson, Chief Counsel, Goddard Space Flight Center, National Aeronautics and Space Administration (Sept. 9, 1993) (the "Goddard Mem.")

the chancellor, the president, the members of the senate, all faculty members, all graduates, all persons added to the roll of the convocation by the senate, and all other persons carried on the roll before July 4, 1974. *Id.* § 5(1).

The Supreme Court of Canada has outlined the powers of the boards of governors and senates subject to the University Act:

Under the *University Act*, R.S.B.C. 1979, c. 419, the management, administration and control of the property, revenue, business and affairs of the university are vested in a board of governors consisting of 15 members. Eight of the members are appointed by the Lieutenant Governor in Council, but two of these must be nominated by the alumni association. The provincial government, therefore, has the power to appoint a majority of the members of the board of governors, but it does not have the power to select a majority. The academic government of the university is vested in the senate, only a minority of the members of which are appointed by the Lieutenant Governor.

*Harrison v. University of British Columbia*, [1990] 3 S.C.R. 451, 459 (Can.) (plurality op.). Further, "under s. 22(1) of the Act, the Lieutenant Governor 'may, at any time, remove from office an appointed member of the board.'" *Id.* at 467 (Wilson, J., dissenting).

In general, the "management, administration and control of the property, revenue, business and affairs of the university are vested in the board." *University Act*, § 27. In addition, the university "enjoys special government-like powers in a number of respects and the exercise of these would presumably fall under the jurisdiction of the board. It has the power to expropriate property under s. 48 and its property is protected against expropriation under s. 50. It is exempt from taxation under s. 51. The board may also borrow money to meet University expenditures (s. 30) and appoint advisory boards for purposes it considers advisable (s. 33). The University may not dispose of its property without the approval of the Lieutenant Governor (s. 47(2))." *Harrison*, [1990] 3 S.C.R. at 467 (Wilson, J., dissenting).

As pointed out above, the academic governance of the university is vested in the senate. *University Act*, § 36. The senate is composed of a number of persons, including the chancellor, the president, deans, administrators, faculty, students, four members of convocation, representatives of affiliated colleges, and four persons appointed by the Lieutenant Governor. *Id.* § 34(2). Thus, only a relatively small minority of the senate will consist of governmental appointees.<sup>2</sup>

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<sup>2</sup> "With respect to some important matters, however, the decisions of the senate are effectively controlled by the board of governors." *Harrison*, [1990] 3 S.C.R. at 469 (Wilson, J., dissenting). For example, "every resolution passed by the senate respecting the establishment or discontinuance of any faculty, department, course of instruction, chair fellowship, scholarship, exhibition, bursary or prize (s. 36(1)) as well as internal

Finally, the faculty is "constituted by the board, on the recommendation of the senate." University Act, § 38. The faculty has various powers, including the power to determine, subject to the approval of the senate, courses of instruction. *Id.* § 39(d).

## II.

The Emoluments Clause, U.S. Const. art. I, § 9, cl. 8, provides:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Goddard advances two basic arguments for concluding that the Emoluments Clause is inapplicable in these cases. First, it maintains that the University of Victoria is not a "foreign State" within the meaning of the Clause. Second, it suggests that when a Federal employee is on Leave of Absence Without Pay status, he or she does not occupy an "Office of Profit or Trust" under the United States.

For reasons somewhat different from Goddard's, we agree that the Clause is inapplicable here. Although we believe that foreign public universities, such as the University of Victoria, are presumptively foreign states under the Emoluments Clause, we also find that, in this case, the university can be shown to be acting independently of the foreign state with respect to its faculty employment decisions. Because such a showing can be made, we conclude that in that context the University of Victoria should not be considered a foreign state.

### A.

The Emoluments Clause was adopted unanimously at the Constitutional Convention, and was intended to protect foreign ministers and other officers of the United States from undue influence and corruption by foreign governments — a danger of which the Framers were acutely aware.<sup>3</sup> James Madison's notes on the Convention for August 23, 1787, report:

Mr[.] Pinkney urged the necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence and

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faculty matters and terms of affiliation with other universities is of no force or effect unless approved by the board (s 37) " *Id.*

<sup>3</sup> See, e.g., *The Federalist* No. 22, at 149 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("One of the weak sides of republics, among their numerous advantages, is that they afford too easy an inlet to foreign corruption.")



moved to insert — after Art[.] VII sect[.] 7. the clause following — “No person holding any office of profit or trust under the U.S. shall without the consent of the Legislature, accept of any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State[.]” which passed nem: contrad.

2 *The Records of the Federal Convention of 1787*, at 389 (M. Farrand ed., 1966) (“Records”); see also 3 *id.* at 327 (remarks of Governor Randolph).<sup>4</sup> “Consistent with its expansive language and underlying purpose, the provision has been interpreted as being ‘particularly directed against every kind of influence by foreign governments upon officers of the United States, based upon our historic policies as a nation.’” *Applicability of Emoluments Clause to Proposed Service of Government Employee on Commission of International Historians*, 11 Op. O.L.C. 89, 90 (1987) (quoting 24 Op. Att’y Gen. 116, 117 (1902)).

Our Office has been asked from time to time whether foreign entities that are public institutions but not diplomatic, military, or political arms of their government should be considered to be “foreign State[s]” for purposes of the Emoluments Clause. In particular, we have been asked whether foreign public universities constitute “foreign State[s]” under the Clause. Our prior opinions on this subject have not been a seamless web. Thus, in an opinion that Goddard cites and relies upon, we concluded that while the University of New South Wales was clearly a public institution, it was not so clear that it was a “foreign State” under the Emoluments Clause, given its functional and operational independence from the federal and state governments in Australia.<sup>5</sup> Accordingly, we opined that the question posed there — whether a NASA employee could accept a fee of \$150 for reviewing a Ph.D. thesis — had to be answered by considering the particular circumstances of the case, in order to determine whether the proposed arrangement had the potential

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<sup>4</sup> The Emoluments Clause builds upon practices that had developed during the period of the Confederation:

It was the practice of Louis XVI of France to give presents to departing ministers who signed treaties with France. Before he left France in mid-1780, Arthur Lee received a portrait of Louis set in diamonds atop a gold snuff box. In October 1780 Lee turned the gift over to Congress, and on 1 December Congress resolved that he could keep the gift. In September 1785 Benjamin Franklin informed Secretary for Foreign Affairs John Jay that, when he left France, Louis XVI presented him with a miniature portrait of himself, set with 408 diamonds. In October Jay recommended to Congress that Franklin be permitted to keep the miniature in accordance with its December 1780 ruling about a similar miniature given to Lee. In March 1786 Congress ordered that Franklin be permitted to keep the gift. At the same time, Congress also allowed Jay himself to accept the gift of a horse from the King of Spain even though Jay was then engaged in negotiations with Spain’s representative, Don Diego de Gardoqui.

<sup>10</sup> *The Documentary History of the Ratification of the Constitution* 1369 n 7 (John P. Kaminski et al. eds., 1993); see also *President Reagan’s Ability to Receive Retirement Benefits from the State of California*, 5 Op. O.L.C. 187, 188 (1981) (discussing background of the ratification of the Clause).

<sup>5</sup> See Memorandum for H. Gerald Staub, Office of Chief Counsel, NASA, from Samuel A. Alito, Jr., Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Emoluments Clause Questions raised by NASA Scientist’s Proposed Consulting Arrangement with the University of New South Wales* (May 23, 1986).

for corruption or improper foreign influence of the kind that the Emoluments Clause was designed to address. On other occasions, however, we have construed the Emoluments Clause to apply to public institutions of higher education in foreign countries without engaging in such an inquiry.<sup>6</sup>

In re-examining these precedents, we have considered the claim that foreign universities, even if "public" in character, should generally not be considered to be instrumentalities of foreign states for purposes of the Emoluments Clause. On behalf of this view, it can be argued that the Clause was designed to guard against the exercise of improper influence on United States officers or employees by the political, military, or diplomatic agencies of foreign states, because payments by those agencies are most likely to create a conflict between the recipient's Federal employment and his or her outside activity. Because public universities do not generally perform such functions, they ought not, on this analysis, to be brought within the Clause.<sup>7</sup>

After considering the question carefully, we have concluded that such an interpretation of the Emoluments Clause is mistaken. Foreign public universities are, presumptively, foreign states within the meaning of the Clause.<sup>8</sup>

The language of the Emoluments Clause is both sweeping and unqualified.<sup>9</sup> The Clause in terms prohibits those holding offices of profit or trust under the United States from accepting "any present, Emolument, Office, or Title, of any kind whatever" from "any . . . foreign State" unless Congress consents. U.S. Const. art. I, § 9, cl. 8. (emphases added). There is no express or implied exception for emoluments received from foreign states when the latter act in some capacity other than the performance of their political, military, or diplomatic functions. The decision whether to permit exceptions that qualify for the Clause's absolute prohibition or that temper any harshness it may cause is textually com-

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<sup>6</sup> See, e.g., Memorandum to File from Robert J. Delahunty, Acting Special Counsel, *Re: Applicability of Emoluments Clause to Employment of CFTC Attorney by East China Institute of Politics and Law* (Aug. 27, 1992), Memorandum to Files from Barbara E. Armacost, *Re: Emoluments Clause and Appointment to the President's Committee on the Arts and Humanities* (Nov. 15, 1990). The General Accounting Office has reached a similar result in a related context. See 44 Comp. Gen. 130 (1964) (retired Coast Guard officer subject to recall to active duty held not entitled to retirement pay for period in which he was teaching for Department of Education of State of Tasmania, Australia).

<sup>7</sup> See Gerald S. Schatz, *Federal Advisory Committees, Foreign Conflicts of Interest, The Constitution, and Dr. Franklin's Snuff Box*, 2 D.C.L. Rev. 141, 163, 166 (1993) ("The Emoluments Clause's reference to foreign states was a reference to foreign governments' acts in their sovereign capacity, as distinguished from the acts . . . of foreign governmental entities without the legal capacity to represent the national sovereign").

<sup>8</sup> The Clause addresses the problem of conflict of interest on the part of a U.S. Government functionary vis-à-vis a foreign sovereign in a sovereign capacity. The Clause thus may not be assumed to disqualify from U.S. Government service . . . an academic paid by a foreign government with which the officer does not deal."

<sup>9</sup> See also *Applicability of the Emoluments Clause To Non-Government Members of ACUS*, 17 Op. O.L.C. 114, 121-23 (1993) (opining that Emoluments Clause applies to foreign public universities).

<sup>10</sup> Accord 49 Comp. Gen. 819, 821 (1970) (the "drafters [of the Clause] intended the prohibition to have the broadest possible scope and applicability").

mitted to *Congress*, which may give consent to the acceptance of offices or emoluments otherwise barred by the Clause.<sup>10</sup>

Further, it serves the policy behind the Emoluments Clause to construe it to apply to foreign states even when they act through instrumentalities, such as universities, which do not perform political, military, or diplomatic functions. Those who hold offices under the United States must give the government their unclouded judgment and their uncompromised loyalty.<sup>11</sup> That judgment might be biased, and that loyalty divided, if they received financial benefits from a foreign government, even when those benefits took the form of remuneration for academic work or research.<sup>12</sup> Moreover, institutions of higher learning are often substantially funded, whether directly or indirectly, by their governments, and university research programs or other academic activities may be linked to the missions of their governmental sponsors, including national scientific and defense agencies.<sup>13</sup> Thus, United States Government officers or employees might well find themselves exposed to conflicting claims on their interests and loyalties if they were permitted to accept employment at foreign public universities.<sup>14</sup>

Finally, Congress has exercised its power under the Emoluments Clause to create a limited exception for academic research at foreign public institutions of learning. The Foreign Gifts and Decorations Act provides in part that Federal employees may accept from foreign governmental sources "a gift of more than minimal value when such gift is in the nature of an educational scholarship." 5 U.S.C. § 7342(c)(1)(B).<sup>15</sup> Thus, Congress has recognized that foreign governmental bodies may wish to reward or encourage scholarly or scientific work by employees of our Government, but has carefully delimited the circumstances in which Federal employees may accept such honors or emoluments. That suggests that Congress

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<sup>10</sup> Accordingly, Congress has acted in appropriate cases to relieve certain classes of government personnel, e.g., retired military officers, from applications of the Clause. See *Ward v. United States*, 1 Cl. Ct. 46 (1982).

<sup>11</sup> See *Application of Emoluments Clause to Part-Time Consultant for the Nuclear Regulatory Commission*, 10 Op. O.L.C. 96, 100 (1986).

<sup>12</sup> Consistent with this view, we have opined that an employee of the National Archives could not serve on an international commission of historians created and funded by the Austrian Government to review the wartime record of Dr. Kurt Waldheim, the President of Austria. See generally, 11 Op. O.L.C. 89 (1987).

<sup>13</sup> Goddard's own link with Columbia University in New York City, see Goddard Mem. at 3, 7, is illustrative.

<sup>14</sup> Of course, the same predicament could arise if Government employees worked at *private* universities abroad (or even in the United States). But the fact that the Emoluments Clause does not address every situation in which Government employees might be subjected to improper influence from foreign states is no reason to refuse to apply it to the cases which it *does* reach.

<sup>15</sup> We have opined that this exception applied to an award of approximately \$24,000 by a foundation acting on behalf of the West German Government to a scientist employed by the Naval Research Laboratory. We reasoned that a "program designed to honor United States scientists and enable them to stay for an extended period at research institutes in the Federal Republic of Germany to carry out research of the Awardee's own choice seems to be in the nature of an educational scholarship, acceptance of which Congress has permitted." Letter for Walter T. Skallerup, Jr., General Counsel, Department of the Navy, from Robert B. Shanks, Deputy Assistant Attorney General, Office of Legal Counsel at 4 (Mar. 17, 1983) (internal quotation omitted).

believes both that the Emoluments Clause extends to paid academic work by Federal employees at foreign public universities and that the Clause's prohibition on such activity should generally remain in force.

Accordingly, we conclude that foreign governmental entities, including public universities, are presumptively instrumentalities of foreign states under the Emoluments Clause, even if they do not engage specifically in political, military, or diplomatic functions.<sup>16</sup>

## B.

Having found that foreign public universities may and presumptively do fall under the Emoluments Clause, we turn next to the question whether the University of Victoria in particular is an instrumentality of a foreign state (the province of British Columbia), and hence within the Clause. We conclude that it is not, at least with respect to the faculty employment decisionmaking that is in issue here. Goddard contends:

The ability of [Canadian] federal or provincial government officials to influence and control the actions of [the University of Victoria's board, senate, and faculty] is most possible concerning the Board, but in all three cases is minimized by the other members of the organizations, the sources from which those members are obtained, the method of their nominations and appointments, and the procedures concerning replacement . . . .

Thus, it appears [that] the University of Victoria is established as a largely self-governing institution, with minimal influence exercisable over the daily affairs and even general policies of the University.

Goddard Mem. at 6.

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<sup>16</sup> We would also reject any argument that foreign public universities should be excluded from the purview of the Emoluments Clause on the theory that the Clause must be taken to prohibit only the acceptance of office or emoluments bestowed by a foreign state while engaged in performing "traditional" governmental functions, i.e., functions that governments would normally have performed at the time of the framing. The theory assumes that governmental support for higher education would not have been among such functions. The argument has several flaws. First, there is no such exception provided by or implicit in the language of the Clause. Second, the purposes of the Clause are better served if it is understood to cover all the functions of modern government, not some narrow class of them. Third, the Framers appear to have thought that support for higher education was indeed a legitimate function of government. The Constitutional Convention considered a proposal to empower Congress to establish a national university, but rejected it on the ground that the power was already embraced within the District of Columbia Clause. See 2 *Records* at 616. President George Washington, in his first and eighth annual addresses, called on Congress to consider establishing a national university. See 30 *The Writings of George Washington* 494 (John Fitzpatrick ed., 1939), 35 *id.* at 316-17.

Without attempting to decide whether, as Goddard claims, the University of Victoria is generally free from the control of the provincial government of British Columbia, we think that the evidence shows that the university is independent of that government when making faculty employment decisions. We rely here chiefly on the Supreme Court of Canada's decisions in the *Harrison* case, cited above, and in the companion case, *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 (Can.).

The principal question presented in *Harrison* was whether the University of British Columbia's mandatory retirement policy respecting its faculty and administrative staff was consistent with the requirements of the Canadian Charter of Rights and Freedoms ("the Charter").<sup>17</sup> Whether the Charter applied turned on whether the challenged policy constituted governmental action — an inquiry raising issues at least somewhat akin to those posed by the "State action" doctrine in United States jurisprudence. See *Harrison*, [1990] 3 S.C.R. at 463 (plurality op.).<sup>18</sup> Over dissent, the Court held that the university's policy was not governmental action under the Charter. In reaching that conclusion, three of the seven judges drew a distinction between "ultimate or extraordinary control and routine or regular control," and held that while the government of British Columbia may be able to exercise the former, it lacked "the quality of control that would justify the application of the Charter." *Id.*; see also *id.* at 478 (L'Heureux-Dubé, J., dissenting on the appeal only) (university not "government" for purpose of section 32 of Charter).

Similarly, in *McKinney*, a majority of the Court, again over dissent, held that the mandatory retirement policies of the defendant universities (there, located in the Province of Ontario) did not implicate the Charter. Moreover, the lead opinion emphasized the autonomy of the provincial universities when making faculty employment decisions:

The *Charter* apart, there is no question of the power of the universities to negotiate contracts and collective agreements with their employees and to include within them provisions for mandatory retirement. These actions are not taken under statutory compulsion, so a *Charter* attack cannot be sustained on that ground. There is

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<sup>17</sup> The Canadian Charter is, in essence, a bill of rights. The Federal Government of Canada "enacted first the *Canadian Bill of Rights*, R.S.C., 1985, App. III, in 1960 and then the *Canadian Charter of Rights and Freedoms* in 1982, the latter having constitutional status. The values reflected in the *Charter* were to be the foundation of all laws, part of the 'supreme law of Canada' against which the constitutionality of all other laws was to be measured." *McKinney v. University of Guelph*, [1990] 3 S.C.R. at 355 (Wilson, J., dissenting).

<sup>18</sup> But see *McKinney*, [1990] 3 S.C.R. at 274-75 (plurality op.) (noting certain differences between Canadian and American doctrines), *id.* at 343-44 (Wilson, J., dissenting) ("This Court has already recognized that while the American jurisprudential record may provide assistance in the adjudication of *Charter* claims, its utility is limited . . . The *Charter* has to be understood and respected as a uniquely Canadian constitutional document.").

nothing to indicate that in entering into these arrangements, the universities were in any way following the dictates of the government. They were acting purely on their own initiative . . . .

. . . . .

The legal autonomy of the universities is fully buttressed by their traditional position in society. Any attempt by government to influence university decisions, especially decisions regarding appointment, tenure and dismissal of academic staff, would be strenuously resisted by the universities on the basis that this could lead to breaches of academic freedom. In a word, these are not government decisions.

*McKinney*, [1990] 3 S.C.R. at 269, 273 (plurality op.); see also *id.* at 418-19 (L'Heureux-Dubé, J., dissenting) (while universities may perform certain public functions attracting Charter review, hiring and firing of employees at universities in both British Columbia and Ontario are not among such actions: "Canadian universities have always fiercely defended their independence").

While the Ontario statute at issue in *McKinney* differed from the British Columbia statute considered in *Harrison* (in particular, Ontario's statutes, unlike British Columbia's, did not permit the provincial government to appoint a majority of a university board's membership), the *Harrison* plurality held that these differences did not establish that the core functions of the British Columbian universities were under the province's control. *Harrison*, [1990] 3 S.C.R. at 463-64 (plurality op.) Thus, the Court's statements in *McKinney* concerning the autonomy of Ontario's universities in matters of faculty employment would apparently hold true for the universities in British Columbia as well.<sup>19</sup> Furthermore, even the dissent in *Harrison* acknowledged "the lack of government control over the mandatory retirement policy specifically in issue here and over matters specifically directed to the principle of academic freedom." *Id.* at 471-72 (Wilson, J., dissenting).<sup>20</sup> The remaining member of the Court accepted the trial court's finding that the university's em-

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<sup>19</sup> Judge Sopinka concurred in the conclusions and reasoning of the *Harrison* plurality except on the question whether the mandatory retirement policy was "law" within the meaning of section 15(1) of the Canadian Charter. He would have preferred not to decide that question on the basis of the assumption that the university was part of the government. *Harrison*, [1990] 3 S.C.R. at 481 (Opinion of Sopinka, J.). In *McKinney*, Judge Sopinka agreed that "a university is not a government entity for the purpose of attracting the provisions of the *Canadian Charter of Rights and Freedoms*" [1990] 3 S.C.R. at 444. While not being willing to say that "none of the activities of a university are governmental in nature," he was of the opinion that "the core functions of a university are non-governmental and therefore not directly subject to the *Charter*. This applies *a fortiori* to the university's relations with its staff." *Id.* (Opinion of Sopinka, J.). As in his opinion in *Harrison*, he preferred not to reach the question whether, if a university were part of the government, its mandatory retirement policies would be "law" for purposes of the Canadian Charter. *Id.*

<sup>20</sup> Judge Cory agreed with Judge Wilson that the University of British Columbia formed part of the government for purposes of section 32 of the Canadian Charter, but disagreed with her on other grounds. *Harrison*, [1990] 3 S.C.R. at 481 (Opinion of Cory, J.).

ployment agreements were essentially private contracts. *Id.* at 479-80 (L'Heureux-Dubé, J., dissenting on appeal only).

These Canadian cases cannot of course determine our interpretation of the Emoluments Clause. But they do provide compelling evidence that the University of Victoria is independent of the government of British Columbia with respect to decisions regarding the terms and conditions of faculty employment. Because that showing can be made, we believe the university should not be considered to be a foreign state under the Emoluments Clause when it is acting in that context.<sup>21</sup>

## CONCLUSION

The Emoluments Clause does not prohibit the two NASA scientists from accepting paid teaching positions at the University of Victoria during their unpaid leave of absence from their agency.

WALTER DELLINGER  
*Assistant Attorney General*  
*Office of Legal Counsel*

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<sup>21</sup> Since it is not necessary to our decision, we do not address Goddard's alternative argument that Federal employees in Leave Without Pay status do not occupy an Office of Profit or Trust within the meaning of the Emoluments Clause

**From:** [Mosley, Ferne](#)  
**To:** [Fugh, Justina](#)  
**Subject:** RE: (b) (6)  
**Date:** Monday, March 01, 2021 10:14:12 AM

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OK, thanks...

*Ferne L. Mosley, Attorney-Advisor*

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**Subject:** RE: (b) (6)

Nope, not yet. Will keep after him!

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
**Sent:** Monday, March 01, 2021 10:12 AM  
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**Subject:** RE: (b) (6)

Hi, Justina – just checking in to see if (b) (5), (b) (6)

[REDACTED]

Thanks.

Ferne

*Ferne L. Mosley, Attorney-Advisor*

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**Subject:** RE: (b) (6)

Very insightful of you to think about talking to Dan Utech. I will do that. Stay tuned!

---

**From:** Mosley, Ferne <[mosley.ferne@epa.gov](mailto:mosley.ferne@epa.gov)>  
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**Subject:** (b) (6)

Hi, I just want to confirm that (b) (5), (b) (6)

[REDACTED]

Thanks, Ferne

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